

REMARKS

This application has been amended in a manner that is believed to place it in condition for allowance at the time of the next Official Action.

Claims 45-90 are pending in the application. Claim 45 has been amended to address an informal matter raised in the outstanding Official Action. In addition, claim 45 recites that the first cotton substance to be inserted in a mouth is sufficient for inhibiting leakage of a fluid by plugging the mouth with the first cotton substance, or of adjusting a shape in both cheeks of the corpse (pg. 6, lines 4-8). In addition, claim 45 recites that the syringe has a button for pushing out said jelly substance and an identification marker for identifying said syringe as one for corpse treatment (pg. 12, lines 1-10).

Claims 45-90 were rejected under 35 USC 112, second paragraph, for allegedly being indefinite. This rejection is traversed.

Claim 45 has been amended so that the term "water-material" no longer appears in the claim. Rather, the claim has been amended to recite a "water absorbent material".

Claims 45-90 were rejected under 35 USC 102(a) as being unpatentable over NISHIHARA in view of NISHIHARA and further in view of KITAJIMA.

NISHIHARA (JP 2002275001) discloses a device for filling a throat with jelly by inserting a device comprising

nares. The device comprises a syringe 1, an inserting tube 4, and a connection portion 5 and jelly 8. However, there is no recognition of a sealing device or cotton plugs.

In an effort to remedy the deficiencies of NISHIHARA JP2002275001 for reference purposes, the Official Action cites to NISHIHARA JP2003111830 for the proposition that it discloses a sealing device for preventing leakage of rectal waste from the anus due to the relaxation of muscles caused upon death. The Official Action cites to KITAJIMA JP8133901 for the proposition that KITAJIMA JP8133901 teaches a method for preventing leakage involving inserting a jelly into the inner part of the nasal cavity and ears and plugging the outer part of the cavities with medical cotton.

The Official Action contends it would have been obvious to provide a sealing device and medical cotton upon combining the teachings of the above-identified publications. However, there is still no recognition that using a first cotton substance to be inserted in the mouth and a sealing member comprising a second cotton substance itself as recited in the claim invention.

Moreover, KITAJIMA (JP08-133901) discloses a cotton plug B for the oral cavity 9. However, this cotton plug B is to be plugged deep into the oral cavity 9 (i.e. throat) but not a cotton substance of the present invention to be inserted in a mouth for preventing a leakage of a fluid such as saliva by plugging the mouth with the cotton substance or adjusting a shape

of both cheeks by positioning the cotton substance inside both cheeks. In other words, the cotton plug B for the oral cavity 9 cannot either prevent a leakage of saliva or adjust a shape of both cheeks.

Moreover, none of JP2002-275001, JP2003-111830 and JP08-133901 discloses providing an identification mark for identifying a syringe as one for corpse treatment. The identification mark of the present invention can help us distinguish between syringes for corpse treatment and those for other purposes.

Applicants further submit that this stands true for the dependent claims, which have yet to be addressed. Indeed, there is no recognition of the additional components or recited amounts for the components set forth in the dependent claims.

The Supreme Court recently addressed the issue of obviousness in *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 167 L.Ed.2d 705 (2007). While the *KSR* Court rejected a rigid application of the teaching, suggestion, or motivation ("TSM") test in an obviousness inquiry, the Court acknowledged the importance of identifying "a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does" in an obviousness determination. *KSR*, 127 S.Ct. at 1731.

Moreover, the Court indicated that there is "no necessary inconsistency between the idea underlying the TSM test

and the *Graham* analysis." *Id.* As long as the test is not applied as a "rigid and mandatory" formula, that test can provide "helpful insight" to an obviousness inquiry. *Id.*

Accordingly, applicants submit that one skilled in the art would have lacked a reason to modify the publications to obtain the claimed invention.

Indeed, a critical step in analyzing obviousness pursuant to 35 U.S.C. §103(a) is casting the mind back to the time of the invention, to consider the thinking of one of ordinary skill in the art, only guided by the publications and then-accepted wisdom in the field. Adherence to this methodology is important in cases where the invention itself may prompt an Examiner to "fall victim to the insidious effect of a hindsight syndrome, wherein that which only the invention taught is used against its teacher." *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ 2d 1313, 1362 (Fed. Circ. 2000). The fact that the prior art could be so modified would not have made the modification itself obvious unless the cited publications themselves provide a reason for the modification.

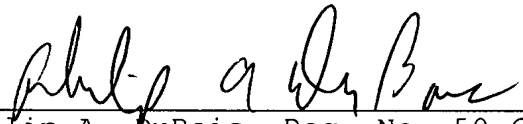
As the cited publications fail to disclose or suggest a reason for combining and modifying the references to obtain the claimed invention, applicant respectfully submits that the above-identified cited publications, alone or in combination, fail to disclose or suggest the claimed invention. In this regard, applicant asks that the obviousness rejection be withdrawn.

In view of the present amendment and foregoing Remarks, therefore, applicant believes that the present application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON


Philip A. DuBois, Reg. No. 50,696
745 South 23rd Street
Arlington, VA 22202
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

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